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10 **UNITED STATES DISTRICT COURT**  
11 **SOUTHERN DISTRICT OF CALIFORNIA**

12 OBESITY RESEARCH INSTITUTE,  
13 LLC,

14 Plaintiff,

15 v.

16 FIBER RESEARCH  
17 INTERNATIONAL, LLC, *et al.*,

18 Defendants.

19  
20 AND RELATED COUNTERCLAIM.  
21

Case No. 15-cv-595-BAS(MDD)

**ORDER OVERRULING ORI'S  
OBJECTION TO MAGISTRATE  
JUDGE'S AUGUST 11, 2016  
ORDER**

**[ECF No. 314]**

22 Presently before the Court is Plaintiff Obesity Research Institute, LLC's  
23 ("ORI") meritless objection to the magistrate judge's August 11, 2016 Order. The  
24 objection specifically addresses Defendant Fiber Research International, LLC's  
25 ("FRI") production of voluminous emails on December 7, 2015, which ORI contends  
26 was produced in a non-compliant format. (*See* ECF No. 308.)

27 Rather than complying with United States Magistrate Judge Mitchell D.  
28 Dembin's Chambers Rules: Civil Pretrial Procedures § IV(C)(2)—which, applied to

1 the circumstances of this case, would have made ORI's discovery challenge due 30  
2 days after the emails were produced in December 2015—ORI sought relief over eight  
3 months later on August 10, 2016. (ECF No. 308.) The magistrate judge promptly  
4 denied ORI's request, observing that "[ORI] is seeking production of certain  
5 documents provided to [ORI] in mid-December 2015 based upon the formatting of  
6 the documents," and ultimately concluding that "[t]he time to bring that motion  
7 before the court expired many months ago and no good cause for the delay [was]  
8 presented." (ECF No. 309.)

9 For the following reasons, the Court **OVERRULES** ORI's objection in its  
10 entirety.

## 11 12 **I. LEGAL STANDARD**

13 A party may object to a non-dispositive pretrial order of a magistrate judge  
14 within fourteen days after service of the order. *See* Fed. R. Civ. P. 72(a). The  
15 magistrate judge's order will be upheld unless it is "clearly erroneous or contrary to  
16 law." *Id.*; 28 U.S.C. § 636(b)(1)(A). The "clearly erroneous" standard applies to  
17 factual findings and discretionary decisions made in connection with non-dispositive  
18 pretrial discovery matters. *F.D.I.C. v. Fid. & Deposit Co. of Md.*, 196 F.R.D. 375,  
19 378 (S.D. Cal. 2000); *Joiner v. Hercules, Inc.*, 169 F.R.D. 695, 697 (S.D. Ga. 1996)  
20 (reviewing magistrate judge's order addressing attorney-client issues in discovery for  
21 clear error). Review under this standard is "significantly deferential, requiring a  
22 definite and firm conviction that a mistake has been committed." *Concrete Pipe &*  
23 *Prods. of Cal., Inc. v. Constr. Laborers Pension Tr. of S. Cal.*, 508 U.S. 602, 623  
24 (1993) (internal quotation marks omitted).

25 On the other hand, the "contrary to law" standard permits independent review  
26 of purely legal determinations by a magistrate judge. *See, e.g., Haines v. Liggett Grp.,*  
27 *Inc.*, 975 F.2d 81, 91 (3d Cir. 1992) ("[T]he phrase 'contrary to law' indicates plenary  
28 review as to matters of law."); *Gandee v. Glaser*, 785 F. Supp. 684, 686 (S.D. Ohio

1 1992), *aff'd*, 19 F.3d 1432 (6th Cir. 1994); 12 Charles A. Wright, et al., *Federal*  
2 *Practice and Procedure* § 3069 (2d ed., 2010 update). “Thus, [the district court] must  
3 exercise its independent judgment with respect to a magistrate judge’s legal  
4 conclusions.” *Gandee*, 785 F. Supp. at 686. “A decision is contrary to law if it fails  
5 to apply or misapplies relevant statutes, case law, or rules of procedure.” *United*  
6 *States v. Cathcart*, No. C 07-4762 PJH, 2009 WL 1764642, at \*2 (N.D. Cal. June 18,  
7 2009).

## 8 9 **II. ANALYSIS**

10 ORI argues that its objection is timely because: (1) “it does not seek any  
11 additional documents,” but rather “merely seeks to correct the format of that which  
12 has already been disclosed”<sup>1</sup>; and (2) the “magistrate judge’s imposition of [the] 30-  
13 day limit is contrary to law.”<sup>2</sup> Throughout its objection, ORI repeatedly invokes  
14 Federal Rule of Civil Procedure 1’s policy that the rules “should be construed,  
15 administered, and employed by the court and the parties to secure the just, speedy,  
16 and inexpensive determination of every action and proceeding.”

### 17 18 **A. The Magistrate Judge’s 30-Day Rule Is Not Contrary to Law.**

19 Federal Rule of Civil Procedure 83(b) permits judges to “regulate practice in  
20 any manner consistent with federal law, rules . . . and the district’s local rules.” In  
21 this district, “[a]ll motion to compel discovery are referred to the magistrate judge  
22 assigned to the case[,]” and “[t]he magistrate judge maintains discretion to waive all  
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24 <sup>1</sup> This argument presented by ORI is wholly contradicted by the fact that ORI filed a  
25 discovery motion. Such motions categorically are subject to deadlines regulating discovery,  
26 whether imposed by court order or a judge’s chambers rules. Thus, the Court rejects this argument  
from the outset.

27 <sup>2</sup> ORI also argues that FRI’s production is “not compliant and unmanageable,” but that is  
28 outside the scope of this Court’s review because August 11, 2016 Order did not reach the substance  
of ORI’s discovery challenge. For this Court to reach that issue, ORI would first need to  
demonstrate that its discovery challenge was timely, which it fails to do.

1 or part of the requirements of Civil Local Rule 7.1.f in deciding discovery motions.”  
2 Civ. L.R. 26.1(e). With this referral by operation of Civil Local Rule 26.1(e), most  
3 magistrate judges maintain clearly defined deadlines to file discovery motions in the  
4 event a dispute arises. *See, e.g.*, Hon. Nita L. Stormes’ Civil Case Procedures § VI(C)  
5 (45-day deadline from the date of the event giving rise to the dispute); Hon. William  
6 V. Gallo’s Chambers Rules § IV(B) (30-day deadline); Hon. David H. Bartick’s Civil  
7 Chambers Rules § IV(C) (45-day deadline); Hon. Ruben B. Brooks’ Chambers Rules  
8 (30-day deadline to file discovery motions). The magistrate judge assigned to this  
9 case requires “[a]ny motion related to discovery disputes . . . be filed no later than  
10 thirty (30) days after the date upon which the event giving rise to the dispute  
11 occurred.” Hon. Mitchell D. Dembin’s Civil Pretrial Procedures § IV(C)(2).

12 “[A] case that is stalled or unreasonably delayed by a party’s failure to comply  
13 with deadlines and discovery obligations cannot move forward to resolution on the  
14 merits.” *In re Phenylpropanolamine (PPA) Prods. Liab. Litig.*, 460 F.3d 1217, 1228  
15 (9th Cir. 2006). The Ninth Circuit has also warned:

16 In these days of heavy caseloads, trial courts in both the  
17 federal and state systems routinely set schedules and  
18 establish deadlines to foster the efficient treatment and  
19 resolution of cases. Those efforts will be successful only  
20 if the deadlines are taken seriously by the parties, and the  
21 best way to encourage that is to enforce the deadlines.  
22 Parties must understand that they will pay a price for  
23 failure to comply strictly with scheduling and other orders,  
24 and that failure to do so may properly support severe  
25 sanctions and exclusions of evidence.

26 *Wong v. Regents of Univ. of Cal.*, 410 F.3d 1052, 1060 (9th Cir. 2005).

27 The crux of ORI’s argument that “[t]he Magistrate Judge’s 30-day rule, in this  
28 instance, is not ‘generally helpful to the orderly progress of litigation’ because it runs  
contrary to Rules 1, 16, 26, 34, and 37[.]” because “the application of a magistrate  
judge’s chamber rule has no basis in meeting the aims of federal law and, in fact, its

1 application is inconsistent with the FRCP[.]”<sup>3</sup> (ORI’s Objection 9:6-19 (artificial  
2 emphasis omitted).) This position is blatantly wrong and disingenuous.

3       There is a strong policy in favor of establishing and enforcing deadlines to  
4 facilitate “the just, speedy, and inexpensive determination of every action and  
5 proceeding.” *See* Fed. R. Civ. P. 1. Rule 16 is consistent with that policy, authorizing  
6 courts to issue scheduling orders to “limit the time to join other parties, amend the  
7 pleadings, *complete discovery*, and file motions.” Fed. R. Civ. P. 16(b)(3)(A)  
8 (emphasis added).

9       The remaining rules of civil procedure that ORI relies upon to argue that the  
10 magistrate judge’s 30-Day Rule is contrary to law are not relevant to timeliness.  
11 These remaining rules—Rules 26, 34, and 37—provide the parties’ duties in  
12 discovery; they do not provide any grounds to conclude that a time limit to filing  
13 discovery motions is somehow contrary to law. Rule 37 does provide a procedure to  
14 challenge an opposing party that fails to make disclosures or to cooperate in  
15 discovery, but it is the aggrieved party’s responsibility to notify the court of any  
16 infractions. The deadline to notify the court is typically established by either the  
17 scheduling order pursuant to Rule 16, or a district’s local rules or judge’s chambers  
18 rules pursuant to Rule 83. ORI, as the aggrieved party, wholly failed to timely notify  
19 the magistrate judge, and rather than recognizing its own negligence in failing to  
20 follow the appropriate rules, ORI took the extreme route of challenging the validity  
21 of the magistrate judge’s 30-Day Rule.

22       Needless to say, this Court rejects ORI’s challenge to the magistrate judge’s  
23 30-Day Rule in its entirety as baseless and frivolous, and concludes that the 30-Day  
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25       <sup>3</sup> ORI attempts to limit the scope of its challenge of the 30-Day Rule to “this instance.” But  
26 ORI fails to recognize that the broad policy arguments presented challenging the assigned  
27 magistrate judge’s 30-Day Rule effectively asks this Court to invalidate all similar rules of  
28 magistrate judges in this district. There is no way that such an extreme result of invalidating all  
such rules would fulfill the purpose of the Federal Rules of Civil Procedure to, among other things,  
“secure the just, speedy, and inexpensive determination of every action and proceeding.” *See* Fed.  
R. Civ. P. 1.

1 Rule is not contrary to law. *See* Fed. R. Civ. P. 1; Fed. R. Civ. P. 16(b)(3)(A); Fed.  
2 R. Civ. P. 72(a); Fed. R. Civ. P. 83(b); *In re Phenylpropanolamine*, 460 F.3d at 1228;  
3 *Wong*, 410 F.3d at 1060; *Cathcart*, 2009 WL 1764642, at \*2.

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5 **B. ORI’s Discovery Challenge Was Untimely.**

6 Having concluded that the magistrate judge’s 30-Day Rule is not contrary to  
7 law, the Court now must determine whether the magistrate judge’s determination that  
8 ORI’s discovery challenge, filed on August 10, 2016, was untimely is clearly  
9 erroneous or contrary to law.

10 Based on the magistrate judge’s 30-Day Rule, and following the production of  
11 the emails in question on December 7, 2015, the deadline to file any discovery  
12 challenge was on January 6, 2016. ORI’s discovery challenge, however, was filed on  
13 August 10, 2016. There is no doubt that here that ORI was untimely in filing its  
14 discovery challenge 6 months late.

15 Rule 6(b) states that “[w]hen an act may or must be done within a specified  
16 time, the court may, for good cause extend the time . . . with or without motion or  
17 notice if the court acts, or if a request is made, before the original time or its extension  
18 expires.” Fed. R. Civ. P. 6(b)(1)(A). “Once the time has expired, a noticed motion  
19 for relief, based on a showing of excusable neglect, is required.” *Gurvey v. Legend*  
20 *Films, Inc.*, No. 09–cv–942, 2012 WL 4061773, at \*5 (S.D.Cal. Sept.14, 2012)  
21 (Battaglia, J.) (citing Fed. R. Civ. P. 6(b)(1)(B)). Under Rule 6(b), ORI had the  
22 opportunity to justify its delay—a delay that even it recognizes—if it established  
23 excusable neglect, but ORI completely failed to do so instead arguing that the  
24 magistrate judge should reach the merits of the discovery challenge because “ORI’s  
25 delay in request is harmless.” (ECF No. 308.) It is ORI’s burden to as the untimely  
26 party to demonstrate either good cause or excusable neglect to make a late filing. ORI  
27 has yet to explain what caused the unreasonable 6-month delay before it filed its  
28 discovery challenge.


1           Accordingly, the Court concludes that the magistrate judge's determination  
2 that ORI's discovery challenge was untimely is neither clearly erroneous nor contrary  
3 to law. *See* Fed. R. Civ. P. 72(a); *Fid. & Deposit Co. of Md.*, 196 F.R.D. at 378.  
4

5 **III. CONCLUSION & ORDER**

6           In light of the foregoing, the Court **OVERRULES** ORI's objection to the  
7 magistrate judge's August 11, 2016 Order. (ECF No. 314.)

8 **IT IS SO ORDERED.**

9  
10 **DATED: June 23, 2017**

  
**Hon. Cynthia Bashant**  
**United States District Judge**